IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 40526 of 2003(Y)

PETITIONERS:

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1. MADHAVAN NAIR, S/O.NARAYANAN NAIR,
KLUNNAKATTUPADAVIL, UZHAVOOR VILLAGE.

2. ANIL KUMAR, S/O.CHANDRAN NAIR,
KUNNAKKATTUPADAVIL, UZHAVOOR EAST KARA,
UZHAVOOR VILLAGE.

BY ADV. SRI.P.BABU KUMAR

RESPONDENT:

JALVITHARANA SANGHAM, UZHVOOR EAST P.O.
REP. BY JOINT SECRETARY, V.N.RAMACHANDRAN,
IRUMPAKATHIKKAL, UZHAVOOR KARA, UZHAVOOR VILLAGE.

BY ADV. SRI.MATHEW SKARIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 40526/03)

PETITIONERS' EXTS.:

EXT.P1: TRUE PHOTOCOPY OF THE PLAINT IN OS NO.81/03 OF THE MUNSIFF'S COURT, PALA DATED 2.4.2003.

EXT.P2: TRUE PHOTOCOPY OF THE NOTICE ISSUED TO THE PETITIONERS FROM THE MUNSIFF COURT, PALA DATED 3.4.2003.

EXT.P3: TRUE PHOTOCOPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS IN O.S.NO.81/03 DATED 11.7.2003.

EXT.P4: TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT AND PETITION FILED BY THE PETITIONERS IN O.S.NO.81/03 DATED 11.7.2003.

EXT.P5: TRUE PHOTOCOPY OF THE DECREE PASSED IN O.S.NO.81/03 DATED ; 10.7.2003.

EXT.P6: TRUE PHOTOCOPY OF THE AFFIDAVIT AND PETITION FILED BEFORE THE MUNSIFF COURT, PALA BY THE PETITIONERS DATED 14.7.2003.

EXT.P7: TRUE COPY OF THE ORDER IN I.A.NO.1075/2003 IN O.S.NO.81/03 PASSED BY THE MUNSIFF COURT, PALA, DATED 22.7.2003.

EXT.P8: TRUE PHOTOCOPY OF THE ORDER IN I.A.NO.1074/03 IN O.S.NO.81/03 PASSED BY THE MUNSIFF COURT, PALA DATED 22.7.2003.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.40526 of 2003

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Dated: 7th August, 2007

JUDGMENT

In this Writ Petition under Article 227 of the Constitution the defendants challenge Ext.P7 order dismissing an application filed by them for setting aside ex parte decree on the ground that the written statement which was filed along with the application was filed beyond 90 days of defendants receiving summons. In fact there was another application for reception of the written statement and that application was dismissed by the learned Munsiff under Ext.P8 order. Having regard to the pronouncement of law by the Supreme Court in **Kailash v. Nanhku** (2005(2) KLT 623), the impugned orders are liable to be set aside. Accordingly, I set aside Exts.P7 and P8 and direct the learned Munsiff to receive the written statement filed by the petitioner on file, formulate issues on the basis of the contentions contained therein and dispose of the suit in accordance with law.

The Writ Petition is allowed as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**